

Temporary storage is not applicable in transactions where there is Retailers' Occupation Tax liability because the exemption is limited to situations where the only liability that can be involved is Use Tax. See 86 Ill. Adm. Code 150.310. (This is a GIL).

September 30, 1999

Dear Mr. Xxxxx:

This letter is in response to your letter dated September 15, 1999. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), enclosed.

In your letter, you have stated and made inquiry as follows:

I am starting a business, registered in the STATE as COMPANY, which will involve the service of a company in Illinois.

I am importing a food product in bulk that will be shipped to a IL CITY area packaging company. This company will package the food product in material shipped in from outside of Illinois. Once packaged, 100% of the product will be trucked to a warehouse outside of Illinois, from where it will be sold to retail and wholesale customers. Absolutely no sale of my product will be made from within Illinois.

The IL CITY area packaging company and my company have no financial interest in each other. Our relationship is purely based on payment for a service rendered. COMOPANY owns no property nor does it have any employee in the State of Illinois.

I have talked on two different occasions with the Department of Revenue of Illinois and on both occasions I was assured that my situation does not require my company to be registered as 'doing business in' Illinois, nor will my company be required to pay any sales tax to the Illinois Dept. of Revenue.

I ask that you kindly reply in writing that this is, in fact, correct so that I can assure my supplier of packaging material that I am not obligated to pay Illinois sales tax. If you wish you may simply write an 'OK' on this letter with your signature and title, and return it in the self addressed stamped envelope.

I thank you for your understanding and attention to this matter.

Based upon the information you provided in your letter, it is our understanding that you purchase bulk food product from your vendor that is located outside Illinois, and direct that the bulk food product be shipped to a third party in Illinois for packaging. The third party packages the product with packaging material you provide from out-of-State and then ships 100% of the product to your warehouse out-of-State. We are assuming for the purpose of this response that the packager is not transferring tangible personal property to you when performing this service.

Enclosed is a copy of 86 Ill. Adm. Code 150.310 concerning "Exemptions to Avoid Multi-State Taxation." The temporary storage exemption is available for tangible personal property which is "acquired outside this State and which subsequent to being brought into this State and stored here temporarily, is used solely outside this State or is physically attached to or incorporated into other tangible personal property that is used solely outside this State, or is altered by converting, fabricating, manufacturing, printing, processing or shaping, and, as altered, is used solely outside this State." 86 Ill. Adm. Code 150.310(a)(4).

As you can see, this exemption only applies to transactions in which the materials are acquired outside this State and after their temporary stay in Illinois are shipped out of Illinois and used solely outside Illinois. When property is located in Illinois at time of sale, or if such property is not acquired outside this State, the transaction is an Illinois retail sale subject to Retailers' Occupation Tax liability. Temporary storage is not applicable in transactions where there is Retailers' Occupation Tax liability because the exemption is limited to situations where the only liability that can be involved is Use Tax. See 86 Ill. Adm. Code 150.310(b), enclosed.

In order to properly document this exemption, purchasers should give certificates to their sellers which state that the raw materials are acquired outside Illinois and brought into Illinois only temporarily for converting, fabricating, manufacturing, printing, processing, or shaping, and are subsequently shipped out of Illinois to be used solely outside the State of Illinois.

The Illinois packager of your product does not, in and of itself, cause you to have nexus with Illinois. The following information outlines the principles of nexus. An "Illinois Retailer" is one who either accepts purchase orders in the State of Illinois or maintains an inventory in Illinois and fills Illinois orders from that inventory. The Illinois Retailer is then liable for Retailers' Occupation Tax on gross receipts from sales and must collect the corresponding Use Tax incurred by the purchasers.

Another type of retailer is the retailer maintaining a place of business in Illinois. The definition of a "retailer maintaining a place of business in Illinois" is described in 86 Ill. Adm. Code 150.201(i), enclosed. This type of retailer is required to register with the State as an Illinois Use Tax collector. See 86 Ill. Adm. Code 150.801, enclosed. The retailer must collect and remit Use Tax to the State on behalf of the retailer's Illinois customers even though the retailer does not incur any Retailers' Occupation Tax liability.

The United States Supreme Court in Quill Corp. v. North Dakota, 112 S.Ct 1904 (1992), set forth the current guidelines for determining what nexus requirements must be met before a person is properly subject to a state's tax laws. The Supreme Court has set out a 2-prong test for nexus. The first prong is whether the Due Process Cause is satisfied. Due process will be satisfied if the person or entity purposely avails itself or himself of the benefits of an economic market in a forum state. Quill at 1910.

The second prong of the Supreme Court's nexus test requires that, if due process requirements have been satisfied, the person or entity must have physical presence in the forum state to satisfy the Commerce Clause. A physical presence is not limited to an office or other physical building. Under Illinois law, it also includes the presence of any agent or representative of the seller. The representative need not be a sales representative. Any type of physical presence in the State of Illinois, including the vendor's delivery and installation of his product on a repetitive basis, will trigger Use Tax collection responsibilities. Please refer to Brown's Furniture, Inc. v. Zehnder, (1996), 171 Ill.2d 410.

The final type of retailer is the out-of-State retailer that does not have sufficient nexus with Illinois to be required to submit to Illinois tax laws. A retailer in this situation does not incur Retailers' Occupation Tax on sales into Illinois and is not required to collect Use Tax on behalf of its Illinois customers. However, the retailer's Illinois customers will still incur Use Tax on the purchase of the out-of-State goods and have a duty to self-assess their Use Tax liability and remit the amount directly to the State. The Use Tax rate is 6.25%.

Please note that while you may not be "doing business in" Illinois for sales tax purposes, other State agencies may have different definitions of that term. You should contact any applicable agencies for their licensing and other requirements.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.